

**MEMORANDUM OF UNDERSTANDING**  
**EMPIRE STATE DEVELOPMENT CORPORATION,**  
**JETS DEVELOPMENT LLC,**  
**and**  
**METROPOLITAN TRANSPORTATION AUTHORITY**

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MEMORANDUM OF UNDERSTANDING made as of this 25<sup>th</sup> day of March, 2004, by and among NEW YORK STATE URBAN DEVELOPMENT CORPORATION d/b/a EMPIRE STATE DEVELOPMENT CORPORATION (“ESDC”), JETS DEVELOPMENT LLC, on behalf of itself and affiliates (“Jets”), and METROPOLITAN TRANSPORTATION AUTHORITY (“MTA”).

WHEREAS, ESDC is considering the development above the West Side Storage Yards located between 30<sup>th</sup> and 33<sup>rd</sup> Streets, 11<sup>th</sup> to 12<sup>th</sup> Avenues, in Manhattan (the “Yards”) of a multipurpose sports, entertainment and exhibition facility (the “Facility”), with a retractable roof (the “Roof”), which could, among other public purposes, expand the capabilities and enhance the functionality of the Jacob Javits Convention Center (“Javits Center”) and complement the proposed expansion of the Javits Center to the North; and

WHEREAS, Triborough Bridge and Tunnel Authority, an affiliate of MTA (“TBTA”), is the owner of record of the Yards, which are used to store and service railroad cars of MTA’s subsidiary, The Long Island Rail Road Company (“LIRR”); and

WHEREAS, the development of the Yards would necessitate the construction of an enclosure above the Yards (the “Enclosure”) that would, among other things, protect LIRR equipment being serviced in, and LIRR personnel working in, the Yards, improve the efficiency of the yards and provide motor vehicle storage and servicing space for the MTA between 30<sup>th</sup> and 31<sup>st</sup> Streets; and

WHEREAS, the City of New York ("City") has been selected as the United States candidate city for the 2012 Summer Olympic Games ("Olympics"), and the State of New York ("State") and the City are desirous of having the City host the Olympics; and

WHEREAS, the International Olympic Committee is expected to designate the host city for the Olympics in July, 2005; and

WHEREAS, the competition to be chosen as the host city for the Olympics is extraordinarily intense; and

WHEREAS, the parties understand and acknowledge that, in order for the City to be designated as the host city for the Olympics, it is imperative that a site for an Olympic Stadium be identified and approved by the Fall of 2004, when the City must formally submit its bid for the 2012 Summer Games to the International Olympic Committee, and that a plan for development of the Stadium be fully in place and construction commenced prior to July, 2005; and

WHEREAS, NYC 2012, a not-for-profit corporation given responsibility by the City to lead the City's efforts to be designated as the host city for the Olympics, has identified the Yards as the preferred site for an Olympic Stadium; and

WHEREAS, the Jets are desirous of constructing a football stadium above the Yards in which their affiliate, the New York Jets, would play their home games and which could also serve as a venue for other major sports events; and

WHEREAS, the New York Jets' current lease expires in 2008 and therefore require that the stadium be available for the 2009 football season; and

WHEREAS, subject to the availability of public funding, the Jets are willing to design and construct the Enclosure which would (i) protect the transportation facilities of the LIRR and (ii) accommodate development of the Facility as an ESDC project; and

WHEREAS, the Jets are willing to design and construct the Facility (i) at their cost, in a manner that would accommodate the home games of the New York Jets and other sports, entertainment events and convention and exhibition events, (ii) subject to funding from other sources, in a configuration that would meet the requirements for an Olympic Stadium, and (iii) subject to the availability of public funding, in a manner that would (A) include the Roof and (B) serve to accommodate the needs of the Javits Center for additional exhibition and convention space and for events which cannot be housed in the existing or proposed Javits facilities; and

WHEREAS, the Jets' willingness to undertake the design, construction and funding of the Facility represents an unprecedented private contribution toward the cost of both an Olympic Stadium and a civic facility which can accommodate sports, entertainment, convention and exhibition events on such a scale; and

WHEREAS, the development of the Facility and the Roof will generate taxes and economic activity for the benefit of the City and the State; and

WHEREAS, the MTA and New York City Department of City Planning, as co-lead agencies, presently are preparing an Environmental Impact Statement to evaluate a transit-oriented redevelopment of Far West Midtown Manhattan that will include among its proposed actions the construction and extension of the Number 7 Subway Line, rezoning actions to allow more mixed-use development, and other public actions intended to foster such development and serve the City as a whole, including expansion and modernization of the Jacob Javits Convention Center and development of the Facility (the "EIS"); and

WHEREAS, MTA agrees to cooperate with ESDC or a subsidiary thereof to implement a project under the New York State Urban Development Corporation Act ("UDC Act") that will facilitate this economic development initiative and yield significant transportation improvements.

NOW, THEREFORE, in order to meet the objectives set forth above, the parties agree as follows:

A. The Enclosure

1. The Jets will continue to study the feasibility of constructing the Enclosure and will, at its own expense, retain such experts and consultants as appropriate to address such matters as structural stability, mechanical systems including ventilation, means and methods of construction, construction logistics, etc. The Jets will cooperate with ESDC and MTA in these endeavors, including the sharing of work product prepared by such experts and consultants. The Jets will prepare and periodically update budgets for construction of the Enclosure and will share the same with ESDC and MTA. It is the intention of the parties that the reasonable costs of such studies and other preparatory work prepared by consultants of the Jets, with respect to the construction of the Enclosure, will be reimbursed out of the proceeds of financing obtained for construction of the Enclosure. The Jets acknowledge that, if for any reason whatsoever, the development and construction of the Enclosure does not occur, such costs will be borne solely by the Jets. MTA will retain a consultant to conduct a study of the impacts of maintaining the Enclosure and operating the Yards once they are enclosed, and the Jets will reimburse ESDC and MTA for the reasonable costs of such consultant on a pay-as-you-go basis; provided that the Jets may later seek to recover such reimbursement from the proceeds of any financing of the Enclosure, and further provided that MTA will consult with the Jets in the selection of the consultant and that the Jets may participate in regular meetings with MTA and the consultant as the study progresses.

2. MTA will cooperate with ESDC or a subsidiary thereof in order to permit the sale or lease of the air space above the Yards, the construction of the Facility, the Enclosure and the Roof and the financing thereof.

3. The parties agree that the Jets will construct the Enclosure in accordance with approved plans and funding arrangements therefor, pursuant to agreement with the MTA

and/or ESDC or an ESDC subsidiary and approved by MTA, or with another entity designated by the MTA.

4. The parties understand and agree that public funding will be required for construction of the Enclosure, and the parties agree that, in cooperation with the State and the City, they will seek to identify the source of such funding.

5. The Jets agree to pay directly or reimburse the MTA/LIRR on a pay-as-you-go basis for all other MTA-related costs for pursuing this project, including, without limitation, outside counsel fees, costs associated with design collaboration and review, site surveys and assessments, environmental review costs, property appraisals, interference with LIRR operations during construction, capital program management and LIRR force account, provided, however, that the Jets may later seek to recover such reimbursement from the proceeds of any financing of the Enclosure.

#### B. MULTI-USE FACILITY

6. The Facility, as presently envisioned, would contain approximately 75,000 seats in the stadium configuration (approximately 85,000 in its Olympic configuration), and, with the Roof, 30,000 square feet of meeting room space, and a 180,000 square-foot exposition hall. It would serve as a venue for sports events, concerts, conventions and exhibitions/expositions. Attached as an Exhibit is a concept drawing as presently envisioned.

7. The Jets, in cooperation with ESDC, will continue to study the feasibility of constructing the Facility and the Roof, and the Jets will continue to develop plans and budgets for such construction.

8. Subject to a determination that adequate public funding is available for construction of the Enclosure and the Roof and that adequate private funds are available for the construction of the Facility, ESDC expects to present to its Board for consideration the establishment of a "project" under the UDC Act, which project shall include (i) acquisition

of an interest in the air space above the Yards and (ii) construction of the Enclosure, Facility and Roof in such air space. ESDC expects to present to its Board a general project plan and to request the Board to authorize acquisition and disposition of interests in real property; make project findings; subject to the concurrence of the City, to override local zoning as needed for the development of the Enclosure, the Facility and the Roof; make findings under SEQRA; and take such other actions as are necessary and desirable to authorize and implement the general project plan.

9. It is expected that the general project plan will provide that ESDC or a subsidiary will lease the air space above the Enclosure for 49 years, with five 10-year renewal options, and will sublease such air space to the Jets for the same lease term, including options, less one day. The sublease will require the Jets to construct the Facility (funded from private sources) and the Roof (funded from public sources), in accordance with approved plans. The sublease will include use provisions and restrictions to be agreed to between ESDC and the Jets. The sublease will also provide for customary economic incentives for projects of this type.

10. The project documents will provide for payment of a ground rent to the MTA in an amount to be agreed between the parties, which ground rent will be calculated to take into consideration the costs of maintaining the Enclosure and operating the Yards within the Enclosure, and the value attributable to the use of air space above the Yards for the Facility.

11. The Jets will construct, own or lease and operate the Facility, subject to the sublease. The Jets will fund the construction of the Facility. The Enclosure and the Roof will be funded from public sources.

12. If New York City is selected as the host city for the 2012 Olympic Games, the Jets will agree to construct or modify the Facility and the Roof to Olympic standards, provided that none of the costs of such construction or modification or of restoring the Facility after the Olympics will be paid for by the Jets but rather will be paid by outside sources, e.g., by the 2012 Organizing Committee or by a third party source identified by

such Committee. The Jets will also agree to rent the Facility, including the Roof, to the Organizing Committee for the Games, under terms to be agreed. In the event New York City is not selected as the host City for the 2012 Olympic Games, the Facility will be constructed to meet National Football League standards, plus accommodations for other uses.

13. The sublease will contain a use clause requiring that the Facility be used for such broadly defined purposes as sports and entertainment events, public events, exhibitions, conventions, expositions, stadium events and the like. The Jets will secure the agreement of their affiliate, the New York Jets, to play their home games at the Facility for a period of not less than 30 years from the first football season played by the New York Jets at the Facility.

#### C. APPROVALS

14. The parties agree to work cooperatively to implement the development described in this Memorandum of Understanding, it being understood that no formal approvals can be given or binding agreements made until environmental reviews have been completed and all legal and agency requirements and processes have been complied with. However, it is the intention of the parties to proceed expeditiously with such reviews and processes.

15. The parties acknowledge that approvals of other State and City agencies may be necessary or desirable to carry out portions of the development contemplated by this Memorandum of Understanding. In such event, the parties agree to work cooperatively to obtain such approvals in 2004.

16. The Jets will be responsible for obtaining all National Football League approvals required for playing New York Jets home games at the Facility.

#### D. SCHEDULE

17. The parties acknowledge that the critical dates for the achievement of their mutual purposes are the Fall of 2004, when the City must formally submit its bid for the 2012 Summer Games to the International Olympic Committee, and July 2005, when the International Olympic Committee will select the host city for the 2012 Summer Games. In view of this, subject to applicable legal requirements, the parties will use their best efforts to execute binding agreements prior to those dates. Specifically, the parties intend to seek any required approvals as soon as practicable in concert with the adoption of the final EIS, which is expected to be completed in the fall of 2004, and to commence detailing their agreements concerning development, construction, financing and operation of the Enclosure, Facility and Roof as soon as practicable after the date hereof. In order to achieve these goals, the parties will continue to consult and meet together on a regular basis, and will use their best efforts to proceed in accordance with the Schedule attached hereto as an Exhibit. Specifically, and subject to all required approvals, the goal will be to execute definitive documents by the spring of 2005, which documents would include: conveyance of air space above the Yards by the MTA; development agreement for the Enclosure; funding agreement for the Enclosure; lease of air space above the Enclosure to ESDC or a subsidiary; sublease of air space to the Jets; development agreement for the Facility and Roof; funding agreement for the Roof; and non-relocation agreement with the New York Jets.

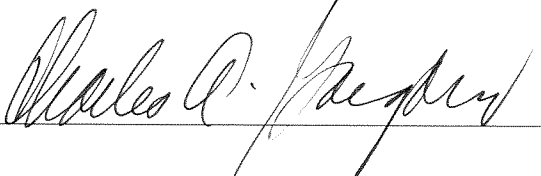
18. Assuming the required approvals have been obtained and binding agreements executed, the parties will use their best efforts to commence construction of the Enclosure prior to July 2005, when New York City must submit its bid for the 2012 Olympic Games, and so that the Facility and Roof can be completed by the Summer of 2009 in time for the New York Jets to play their 2009 home games.

19. Nothing contained herein shall in any manner be deemed a legal or binding commitment of ESDC, the Jets or MTA unless and until the Boards of ESDC and MTA approve this project and definitive agreements are executed by the parties. The purpose of this Agreement is to state the principles and understandings for pursuing the development of

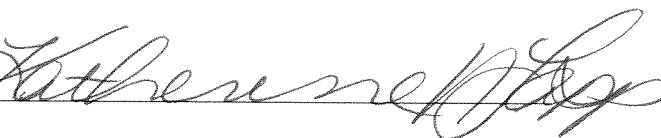


the Enclosure, Roof and Facility and obtaining the necessary approvals for the same. This Agreement does not purport to deal comprehensively with all the terms and conditions of the contemplated transaction.

NEW YORK STATE URBAN DEVELOPMENT  
CORPORATION d/b/a EMPIRE STATE  
DEVELOPMENT CORPORATION

By 

METROPOLITAN TRANSPORTATION AUTHORITY

By 

JETS DEVELOPMENT LLC

By 

Exhibits

1. Facility Concept Drawing
2. Schedule

3/23/04

Westside Sports, Entertainment  
and Exhibition Facility

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Schedule

1. June, 2004 - Certification of Draft Generic Environmental Impact Statement by MTA and City Planning.
2. June, 2004 – ESDC initial Board action including adoption of General Project Plan.
3. September, 2004 – ESDC Public Hearing on General Project Plan.
4. November, 2004 – Adoption of Final Generic Environmental Impact Statement by MTA & CPL.
5. November, 2004 – Final ESDC Board Action.
6. November, 2004 – MTA Board Action.
7. April, 2005 – Closing of leases and other transaction documents.
8. May, 2005 – Closing of initial Platform Financing; initial Facility Financing.
9. June, 2005 – Construction Start.